



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 28, 1994

Ms. Alesia L. Sanchez
Legal Assistant
Legal Services, 110-1A
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

OR94-818

Dear Ms. Sanchez:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 24719.

The Texas Department of Insurance (the "department") received a request for all information regarding any complaints against a certain individual. You seek to withhold portions of the requested information based on sections 552.101 and 552.108 of the Government Code.¹

Section 552.101 of the Government Code excepts from required public disclosure information considered to be confidential by law, including judicial decisions recognizing the right to privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). You assert that this provision excepts certain information you say is criminal history record information.

Where an individual's criminal history information has been compiled by a governmental entity, the information takes on a character that implicates the individual's right to privacy. See *United States Dep't. of Justice v. Reporters Comm. for Freedom*

¹In the department's original request for an open records decision, you also raised sections 552.103 and 552.111 as exceptions to the required public disclosure of certain portions of the requested information. By letter of July 8, 1994, you inform us that the department no longer seeks to withhold information under these exceptions.

of the Press, 489 U.S. 749 (1989). We, therefore, conclude that the department must withhold from required public disclosure the criminal history information under section 552.101 of the Government Code. *See id.*; *see also* Gov't Code § 411.106(b).

You raise section 552.108 of the Government Code in regard to a letter from a Compliance Specialist in the department's Insurance Fraud Unit to the President of the Titan Indemnity Company, and a "Contact Report" from the department to the Travis County District Attorney's Office. Section 552.108 excepts from required public disclosure "[a] record of a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime" and "[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution." Ordinarily, this exception cannot apply to the records of an agency such as the department whose primary function is to regulate an industry or to license certain professionals. *See* Open Records Decision No. 199 (1978). This is so because an agency whose primary function is essentially regulatory does not qualify as a law enforcement agency. *See id.*

However, an agency that does not qualify as a law enforcement agency may under certain circumstances claim that section 552.108 excepts its records. *See* Attorney General Opinion MW-575 (1982). If an investigation by an administrative agency reveals possible criminal conduct that the agency intends to or already has reported to the appropriate law enforcement agency, then section 552.108 will apply to the information gathered by the administrative agency if its release would unduly interfere with law enforcement. *See* Open Records Decision No. 493 (1988); Attorney General Opinion MW-575.

The information at issue consists in part of information the department gathered about the possible criminal conduct. The letter from the department to the President of Titan Indemnity Company is a request for more information about Mr. Nitsche. The records indicate that the department reported possible criminal conduct to the Travis County District Attorney on January 27, 1992. Yet, you do not explain how the release of the information at issue will unduly interfere with law enforcement. We do not know whether the Travis County District Attorney prosecuted the case. Nor do we know whether the case has been closed.

The information on its face does not reveal that its release will interfere with law enforcement. Unless the information on its face reveals that its release will interfere with law enforcement, the law enforcement agency involved must explain how the release will so interfere. *See* Attorney General Opinion MW-575 at 2. Thus, in this case the Travis County District Attorney must explain how its release will interfere with its law enforcement efforts before section 552.108 can apply.

Since neither the department or the district attorney has explained how the release of the information at issue will unduly interfere with law enforcement, the information is presumed to be public and must be released. To withhold the information, either the department or the district attorney must now make a compelling demonstration of reasons why the information should not be made public. *See* Open Records Decision No. 586 (1991) (determining that the law enforcement interests of another governmental body may be a compelling reason for nondisclosure).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Kay Guajardo". The signature is fluid and cursive, with the first name "Kay" and last name "Guajardo" clearly distinguishable.

Kay Guajardo
Assistant Attorney General
Open Government Section

KHG/MAR/rho

Ref.: ID# 24719

Enclosures: Submitted documents

cc: Ms. Rebecca G. Boyd
2515 Armstrong
Leander, Texas 78641
(w/o enclosures)